# Neg- Harrison Democracy Aff- TOC – Nirmal

## Strat

Util FW

Short PIC + Short DA

Case (Read Hate Speech Turn on Case)

## Case

### FW- Top Level

#### Prefer consequentialism- Colleges don’t have unified intentions

#### A. College actions are taken through the combination of multiple individual actions- so ther’s no overaching intent

#### B. Elections and succession of administrators mean that the composition of colleges is never stable, so they never have a unified intention. Even if a policy is passed with some intention, the intention of a new set of leaders is immediately different

#### C. College administrators have conflicting interests- which are contradictory, so even if we could measure individual intentions it would be nonsensical to combine them

### AT: Rousseau

#### 1. People submit their rights to the state for protections- that requires at least some degree of control from the state to ensure that people have basic rights protections

#### 2. No control over the citizienry destroys a persons capability to will by themselves because security is not guaranteed to ensure that you’ve created an atmosphere of relations that preempts coercion

#### 3. States are necessary to enforce certain rights claims- especially when there are conflicting rights to property or other things

### AT: Rousseau 2

#### 1. No impact- if people are used as a means in some instances, it’s to ensure that they are capable of developing their own ends in the future

#### 2. No link- people are a part of the ends- in order for a state to function it amakes policies that are dicted to protect them by their own virtue. It’s what people want

#### 3. It’s contradictory- people can will to hurt other people under their framework, that’s never objective which means that discussion is subjective because different communities have different values

### AT: Goldberg

#### 1. The card says “he first amendment itself is a judgement of the american people that benefits outweigh the costs- the constitution forecloses any attempt to revise that judgement" which proves that util calc is used to justify why people think they want free speech.

#### 2. No impact- there’s nothing in the philosophy of the 1AC that justifies why the constitution even matter,s we should be able to question things ourselves

#### 3. Relies on semantic uses of how the first amendment operates- prefer a pragmatic reading because it forces us to question laws and think about their value

#### 4. This card kills phil\* ed, we can never have a discussion of how consequentialist readings interact with non-consequetnialist ones, but there are other words in the res that indicate that a policy view should boe considered i.e. resolved, and they foreclose actual philosophical education because it will be extended in the 1AR as a paramater

### AT: Giley

#### 1. Presumes consequentialism- that collapses to our framework, because it uses the same logic

#### 2. doesn't mean that gov. legitimacy always increases consequences so it's not a stable link, it's better to make consequentialist decisions more often

### AT: Estlund

#### 1. Fallacy of origin- just because discussion produces better value in the future, that doesn’t make discussion valuable in of itself

#### 2. Not normative- agents can always reject the importance of discussion which means that their ethic can never be motivational

#### 3. This requires that only some discourse occurs, there is a link insufficiency issue, and they can’t guarantee that everyone’s views are included either. They don’t have a brightline for how much discourse is actually valuable which means their fw can never be used

### Advantage 1

#### No uniqueness- campuses already question the state a ton. Student activism and protests are at an all-time high. HERI 16 Higher Education Research Institute 16.

Higher Education Research Institute. “College students’ commitment to activism, political and civic engagement reach all-time highs”. UCLA Newsroom. February 10, 2016. <http://newsroom.ucla.edu/releases/college-students-commitment-to-activism-political-and-civic-engagement-reach-all-time-highs>.

Colleges and universities across the U.S. experienced an increase in student activism over the past year, as students protested rising college costs and hostile racial climates on their campuses. Now, findings from UCLA’s annual CIRP Freshman Survey (PDF) suggest that participation in demonstrations may intensify in the months ahead. The survey of 141,189 full-time, first-year students from around the U.S. found that interest in political and civic engagement has reached the highest levels since the study began 50 years ago. Nearly 1 in 10 incoming first-year students expects to participate in student protests while in college. The survey, part of the Cooperative Institutional Research Program, is administered nationally by the Higher Education Research Institute at the UCLA Graduate School of Education and Information Studies. The 8.5 percent who said they have a “very good chance” of participating in student protests while in college represents the highest mark in the survey’s history and is an increase of 2.9 percentage points over the 2014 survey. Black students were the most likely to expect to protest, with 16 percent reporting that they had a very good chance of demonstrating for a cause while in college — 5.5 percentage points higher than in 2014. The rising interest in activism coincides with some recent successful protests by college students. After months of protesting a perceived lack of responsiveness by university administrators to racial bias and discrimination, University of Missouri students forced the resignation of the system’s president in November 2015. “Student activism seems to be experiencing a revival, and last fall’s incoming freshman class appears more likely than any before it to take advantage of opportunities to participate in this part of the political process,” said Kevin Eagan, director of CIRP. “We observed substantial gains in students’ interest in political and community engagement across nearly every item on the survey related to these issues.”

#### 2. Turn- Hate speech makes people less likely to speak out and check state action

#### Hate speech is constitutionally protected- the aff restricts it

**Moore 16** [Social Studies Research and Practice www.socstrp.org Volume 11 Number 1 112 Spring 2016 You Cannot Say That in American Schools: Attacks on the First Amendment James R. Moore Cleveland State University]

**The first amendment**, a crucial component of American constitutional law, **is under attack from** various **groups** **advocating for censorship in universities** and public schools. The censors assert that restrictive speech codes preventing anyone from engaging in any expression deemed hateful, offensive, defamatory, insulting, or critical of sacred religious or political beliefs and values are necessary in a multicultural society. These speech codes restrict critical comments about race, religion, gender, sexual orientation, physical characteristics, and other traits in the name of tolerance, sensitivity, and respect. Many **hate speech codes are a violation of the first amendment** **and have been struck down** **by** federal and state **courts**. **They persist** in jurisdictions where they have been ruled unconstitutional; **most** universities and **public schools have speech** **codes**. This assault on the first amendment might be a concern to all citizens, especially university professors and social studies educators responsible for teaching students about the democratic ideals enshrined in our constitution. Teachers should resist unconstitutional speech codes and teach their students that the purpose of the first amendment is to protect radical, offensive, critical, and controversial speech. The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). The first amendment is the world’s oldest written safeguard for freedom of expression—this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy (Haynes et al., 2003). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). The Foundation for Individual Rights in Education (2013) found “**62% of universities** (254 out of 409 universities in the survey) **maintain** severely **restrictive** **red-light speech codes** – **policies that** clearly and **substantially prohibit protected speech**” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). Many hate **speech codes**, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools **are** often, albeit well-intended, **violations of the First Amendment** (Foundation for Individual Rights in Education; Haynes, 2013; *Saxe V. State College Area School District*, 2001).

#### Removing restrictions on free speech allows hate speech – hate speech IS free speech

**Volokh 15** Eugene Volokh,No, There’s No “hate Speech” Exception to the First Amendment, The Washington Post, 5/7/15, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/07/no-theres-no-hate-speech-exception-to-the-first-amendment/?utm_term=.05cfdd01dea4> //

I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech,” or “When does free speech stop and hate speech begin?” But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. **But** this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s [Tweet](https://twitter.com/ChrisCuomo/status/595934009764487168) that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

#### Speech codes are good– they diminish right-wing movements and form coalitions of targeted groups.

**Parekh 12** [Parekh, Bhikhu (2012) ‘Is There a Case for Banning Hate Speech?’, in Herz, M. and Molnar, P. (eds.) The Content and Context of Hate Speech: Rethinking Regulation and Responses. Cambridge: Cambridge University Press, pp. 37–56. ]

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups. When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their operations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advantage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### The DA turns the case and outweighs

#### A. Magnitude- Hate speech normalizes psychological violence which renders educational spaces null and increases likelihood of physical violence

* Makes physical violence more likely—empirically proven
* Causes psychological harms
* Makes educational spaces null and void
* Normalizes oppressive practices
* Easy to reject from a position of privilege

**Heinze 14**: Eric Heinze, professor of law & humanities at Queen Mary university of London. March 31, 2014. Nineteen arguments for hate speech bans—and against them. Free Speech Debate. Free speech scholar Eric Heinze identifies the main arguments for laws restricting hate speech and says none are valid for mature Western democracies. <http://freespeechdebate.com/en/discuss/nineteen-arguments-for-hate-speech-bans-and-against-them/>. RW

On all sides of the debate, we can agree that speech is necessary for democracy. Governments ought not to abridge speech willy-nilly. They must show how the speech in question poses a genuine danger. In the case of hate speech, has any such menace been shown? In my book [Hate Speech and Democratic Citizenship](https://global.oup.com/academic/product/hate-speech-and-democratic-citizenship-9780198759027?cc=gb&lang=en&), I reject the classical liberal defences of free speech, let alone newer libertarian ones. I argue that the strongest case for free speech is grounded on specifically democratic principles, which must not be confused with Millian, liberal ones. I cannot reproduce that thesis here, but will briefly respond to some familiar claims raised by the bans’ advocates. 1. The ‘anti-absolutist’ argument: ‘No rights are absolute. Rights must be limited by respect for others, and by the needs of society as a whole. The British Lord Bhikhu Parekh writes, “Although free speech is an important value, it is not the only one. Human dignity, equality, freedom to live without harassment and intimidation, social harmony, mutual respect, and protection of one’s good name and honour are also central to the good life and deserve to be safeguarded. Because these values conflict, either inherently or in particular contexts, they need to be balanced.” There are, moreover, many regulations of speech to which no one objects, punishing, for example, commercial fraud, graffiti, or courtroom perjury. Hate speech bans are no different.’ The ‘not speech’ argument: ‘The crudest hate speech is not really speech at all. It is merely the kind of “inarticulate grunt” that can legitimately be banned because it forms, in the words of US Supreme Court Justice Anthony Kennedy, “no essential part of any exposition of ideas.”’ The ‘Weimar’ (or ‘snowball’) argument: ‘Democracy under the Weimar Republic or the former Yugoslavia show that too much free speech leads to atrocities. Some offensive remarks may, on the surface, appear harmless. But seemingly innocuous offences snowball into more pernicious forms. Once speech reaches a Nazi-like extreme, it becomes too late to avert the dangerous consequences.’ The ‘direct harm’ argument: ‘Hate speech can cause psychological harm, just as hate-motivated violence causes physical harm. Children who are called “nigger”, “Paki”, or “queer” suffer just as much as when they are physically bullied. For adults, verbal abuse can render workplace, educational or other environments unbearable.’ The ‘indirect harm’ argument: ‘The harms of hate speech do not manifest in a conventionally empirical sense. From some phenomenological and socio-linguistic perspectives, hateful expression is “illocutionary”, i.e. not merely denoting hatred but enacting discrimination, and “perlocutionary”, disseminating adverse psychological effects regardless of any materially evident impact. Anthony Cortese describes a “cultural transmission theory”, whereby cultures “pass hate on to each succeeding generation, making intolerance “normal or conventional.” Hate speech germinates intolerance, not through discrete, causally traceable chains of events, but through cumulative effects.’ The ‘hate crime’ argument: ‘The bans are necessary because hate speech is commonly connected to hate-based acts of murder, battery, rape, assault, and property theft or damage.’ The ‘disproportionate impact’ argument: ‘It’s easy for those in privileged positions to oppose hate speech bans. They do not bear the brunt of hatred. But “individual freedom” looks different from the viewpoint of historically vilified groups.’

#### Turns counterspeech- psychological violence hurts ability to participate in the movement

#### B. Inclusivity- It causes less discursive participation from minorities which harms ability to reach the truth

**Horne 16**: Solveigh Horne, Minister of children and equality in Norway. “hate speech—a threat to freedom of speech.” March 8, 2016. Huffington Post. <http://www.huffingtonpost.com/solveig-horne/hate-speech--a-threat-to_b_9406596.html>. RW

Hate speech in the public sphere takes place online and offline, and affects young girls and boys, women and men. We also see hate speech attacking vulnerable groups like people with disabilities, LGBT-persons and other minority groups. Social media and the Internet have opened up for many new arenas for exchanging opinions. Freedom of speech is an absolute value in any democracy, both for the public and for the media. At the same time, opinions and debates challenge us as hate speech are spread widely and frequently on new platforms for publishing. Hate speech may cause fear and can be the reason why people withdraw from the public debate. The result being that important voices that should be heard in the public debate are silenced. We all benefit if we foster an environment where everybody is able to express their opinions without experiencing hate speech. In this matter we all have a responsibility. I am especially concerned about women and girls being silenced. Attempts to silence women in the public debate through hate speech, are an attack on women’s human rights. No one should be silenced or subjected to threats when expressing themselves in public. Women are under-represented in the media. In order to get a balanced public debate it is important that many voices are heard. We must encourage women and girls to be equal participants with men. Hate speech prevents women from making their voices heard. I also call upon the media to take responsibility in this matter. In some cases the media may provide a platform for hate speech. At the same time, I would like to stress that a liberal democracy like Norway strongly supports freedom of speech as a fundamental right.

#### 3. No internal link between where codes are placed and their capability to check state action

#### 4. There is a clear brightline for speech codes- Classifying hate speech is relatively clear-cut – other laws prove that line-drawing is feasible

* yes brightline
* line-drawing problem isn't a reason to reject regulation entirely

**Rosenfeld 01** [Michel Rosenfeld (Justice Sydney L. Robins Professor of Human Rights, Benjamin N. Cardozo School of Law), "HATE SPEECH IN CONSTITUTIONAL JURISPRUDENCE: A COMPARATIVE ANALYSIS," Jacob Burns Institute for Advanced Legal Studies, 2001] AZ

Unless one adopts a Holmesian view of speech139 , the “slippery slope” argument is largely unpersuasive, and this seems particularly true in the context of hate speech. Indeed, in many cases, such as those involving Holocaust denial, cross burning, displaying swastikas, calling immigrant “animals”, there do not appear to be any line drawing problems. These cases involve clearly recognizable expressions of hate which constitute patent assaults against the most basic dignity of those whom they target, and which fly in the face of even a cursory commitment to pluralism. On the other hand, there are cases of statements, which some groups may find objectionable or offensive, but which raise genuine factual or value based issues, and which ought therefore be granted protection. For example, strong criticism of the Pope for his opposition to contraception and to homosexual relationships as being “indifferent to human suffering caused by overpopulation and an enemy of human dignity for all” may be highly offensive to Catholics, but even in a country in which the latter are a religious minority should clearly not be in any way censored, punished or officially characterized as hate speech. There is of course a grey area in between these two fairly clear cut areas, in which there are difficult line drawing problems, as exemplified by the German controversy over the claim that “soldiers are murderers”140 . Line drawing problems, however, are quite common in law as they tend to arise whenever a scheme of regulation attempts to draw a balance among competing objectives. This problem may well be exacerbated when a fundamental right like free speech is involved, but that justifies at most deregulating the entire gray area, not toleration of all hate speech falling short of incitement to violence.

### Advantage 2

#### 1. Link turn- colleges have the right to counter the state too- that’s what the entire framework is about which means that if codes go against the constitution that’s good

#### 2. There are also laws that permit public schools to make decisions by themselves that can differ with what the state allows

#### 3. Codes aren’t arbitrary- that’s above

#### 4. Text: The Supreme court of the United States, in the next available test case, should rule that public colleges and universities ought to restrict constitutionally protected hate speech

With a series of decisions striking down speech codes on campuses, the Supreme Court has made dealing with hate speech very difficult. Speech must present a "true threat" in order to be regulated. On the other hand, the Court has been more permissive when it comes to regulations regarding sexual harassment. This study proposes using the Court's model of sexual harassment for hate speech in work and learning environments to circumvent the "true threat" standard. Circumventing the "True Threat" Standard in Campus Hate Speech Codes "By words one person can make another person blissfully happy or drive them to despair, by words the teacher conveys his knowledge to his pupils, by words the orator carries his audience with him and determines their judgments and decisions. Words provoke affects and are in general the means of mutual influence among men."[[1]](http://www.firstamendmentstudies.org/wp/hate_speech.html#n1) Hate speech is a pervasive problem suffered particularly by ethnic and sexual minorities. It can undermine self esteem, cause isolation, and result in violence. Words can be damaging and the damage can be heightened by emotion and other contextual factors.[[2]](http://www.firstamendmentstudies.org/wp/hate_speech.html#n2) Unfortunately, hate crimes are the on rise. According to FBI figures released on November 22, 2004, hate crimes rose from 7,462 in 2002 to 7,489 in 2003. Half of these crimes targeted racial groups; 2,548 against Blacks, 830 against whites, 231 against Asians. Religious intolerance was the cause of 1,343 crimes, and of these, 927 targeted Jews. Attacks based on sexual orientation amounted to 1,239 cases. Words can reinforce and/or maintain social inequality in the home, in the classroom, in the workplace, and in social settings. Hate messages are real and immediate for victims. In her article in the Miami Law Review, Professor Patricia Williams called hate messages "spirit murder."[[3]](http://www.firstamendmentstudies.org/wp/hate_speech.html#n3) According to research completed by professors Kitano and Allport, the effects of hate speech include displaced aggression, avoidance, retreat, withdrawal, alcoholism, and suicide. The special report of the Attorney General of California [1988] demonstrates that epithets and harassment "often cause deep emotional scarring and bring feelings of intimidation and fear that pervade every aspect of a victim's life." In his book Words that Wound, Professor Delgado demonstrates that hate speech victims suffer high blood pressure and loss of self-worth. In the Journal of Social Psychiatry, Professor Hafner demonstrates that psychological disturbances including headaches, social withdrawal, depression, and anxiety attacks result from working or learning in a hostile environment. Other reports clearly demonstrate that hate speech results in feelings of ethnic or gender inferiority. In the Journal of Experimental Sociology (1985), Greenberg and Pysczynski [Piszynski] demonstrate that overhearing a racist slur causes the listener to evaluate members of the slurred group more harshly in the future. Hostile environments trigger avoidance strategies that limit personal freedom and have serious economic consequences. Students who are victims of hate speech often avoid classes and other places of hate speech such as food courts and libraries. Their grades then suffer along with their socialization into a healthy diverse community. According to Lieberson, Stereotypes: The Consequences for Race and Ethnic Interaction in Marrett & Leggon, eds (1985) Research on Race and Ethnic Relations). Yet the First Amendment of the constitution protects freedom of expression, thereby guaranteeing protection for hate speech unless it presents a clear and present danger, is obscene, libelous, slanderous, or an imminent, "true" threat. This standard presents campus officials with a difficult dilemma. In accordance with strict readings of the First Amendment by the courts, officials must protect all speech not regulated by time, place and manner "content neutral" restraints, unless it can be shown that the speech presents a "true threat."[[4]](http://www.firstamendmentstudies.org/wp/hate_speech.html#n4) Such a rigorous standard places a heavy burden of proof on the attacked and on school officials. The standard is the reason that no campus codes have passed constitutional muster to date, though some have yet to be challenged. The purpose of this study is review the law surrounding hate speech and to start a conversation about a third way to regulate hate speech. The study proceeds in several stages. First, it reviews the current status of hate speech rulings in several venues. It deals with a vast array of descriptors which have been used in the hate speech debate including racist and sexist speech, harassing speech, inappropriate and/or insensitive speech, insulting speech, verbal attacks on groups, fighting words, and performative utterances. Second, in order to overcome the chaos resulting from these myriad terms, this study builds an analog to sexual harassment law that legally proscribes hate speech on campuses without violating the First Amendment or placing an impossible burden of proof on the offended. The key to overcoming the semantic problems is to transcend them by creating a context driven system that relies on proof that a hostile learning environment exists. Third, the study concludes by suggesting constitutional, campus-based solutions to the hate speech problem that stem from this analysis.

#### This serves as terminal defense to the advantage- courts no longer disagree with college campuses